

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL

CRIMINAL WRIT PETITION NO. 1503 OF 2007

Shri Shah Alam Rafuddin Shaikh

..Petitioner

Vs.

The State of Maharashtra

..Respondent

Mr.
Mr.

S.V.
A.S.

Dhakephalkar
Shitole,

APP

for
for

petitioner.
State.

CORAM:

B.H.

MARLAPALLE,J.

Reserved on : August 24, 2007.

Pronounced on : August 28, 2007.

P.C.:

1. Heard Mr. Dhakephalkar the learned counsel
for the petitioner and Mr. Shitole, the learned APP
for the State.

2. The petitioner was issued an externment order
under Section 56 of the Bombay Police Act, 1951 (for
short the Act) by the Deputy Commissioner of Police,
Bhiwandi Division vide his order dated 11/5/2007 for a
period of one year from the Districts of Thane and the
areas of Mumbai Urban and Mumbai Suburban. The said
order was challenged in an appeal filed under Section
60 of the Act before the State Government and the

Principal Secretary in the Department of Home has allowed the said appeal partly as per order dated 20/7/2007 and the externment period of one year has been reduced to six months.

3. It was submitted by Shri Dhakephalkar the learned counsel for the petitioner that the petitioner is a resident of Gaibeenagar, Bhiwandi in Thane District and all the three CRs registered against him and referred in the impugned order were registered with the Police Station at Shanti Nagar within the limits of Thane Districts and, therefore, the externment order could not have covered the Greater Bombay District. The order, therefore, suffers from the vice of excessiveness and infringes upon the fundamental rights of the petitioner guaranteed under Article 19 (2)(d) of the Constitution. He further submitted that after receipt of the show-cause notice dated 14/2/2007, the petitioner had appeared before the Competent Authority, placed documentary evidence on record, examined the witnesses in support of his case that he is a social worker and is not involved in any criminal activities, the same was not considered by the Competent Authority while passing the

externment order. He further submitted that even the Appellate Authority failed to take into consideration the material brought on record by the petitioner in support of his case that he was not a history-sheeter, was not associated with any gang or any extortion racket and that the criminal complaints were registered only on account of the political rivalry. He further submits that the petitioner is the sole bread earner and he has a family to support. Mr. Dhakephalkar urged that the petitioner's wife is due to deliver a baby within a short time and, therefore, the restrictions put on him pertaining to the Thane District and the Greater Bombay District should be removed by setting aside the order of externment. He has placed reliance on the decision of this court in the case of Mukesh Ramchandra Rajput vs. State of Maharashtra and ors. [2005 (1) Bom. C.R. (Cri) 364].

4. On behalf of the State the learned APP has advanced his arguments by referring to the original record and submitted that the Lower Appellate Authority has already taken a sympathetic view and reduced the period of externment to six months and

half of the period of externment has already been suffered by the petitioner. He further submitted that the family difficulties cannot override the law and order demand and the impugned order has been passed by way of preventive measure so that the petitioner is kept away from the boundaries of the Greater Bombay and Thane Districts which are virtually one contiguous industrial, trade and commercial agglomeration.

5. I have gone through the record which prima facie shows that the petitioner is a history-sheeter so far as his involvement in activities of extortion at the threats of assault by deadly weapons and creating terror in the surrounding areas. The petitioner claims that C.R. Nos.177/02 and 129/05 were compromised between him and the complainants, but there was no record in support of the said contentions. Similar statement was made by him before the Competent Authority as well and the Competent Authority held that there was no such compromise recorded before any competent forum. The Competent Authority has also considered the oral depositions of the witnesses examined by the petitioner and in its findings recorded separately held that these witnesses

were unreliable.

6. The externment order also referred to the in-camera statements of two witnesses recorded by the Inspector of Police. The record further shows that these statements were verified by the Assistant Commissioner of Police and the witnesses concerned confirmed before the Assistant Commissioner of Police that the statements were recorded as per their disclosure and the contents in the statements were correct. It was submitted that no specific instances have been brought on record in the statements recorded in-camera. These submissions are fallacious. Both the witnesses have given specific instances of attacks/threats to them by the petitioner and his associates at the point of deadly weapons like knife. They have specifically given the instances of extortion of money by the petitioner by showing a knife and thus creating a scare in their mind an eminent physical assault if the money was not paid. The Competent Authority as well as the Appellate Authority were, therefore, right in their observations that witnesses were scared to come openly and make statements against the petitioner on account of fear

of their safety. I am also satisfied that the Competent Authority as well as the Appellate Authority have separately considered the defence submitted by the petitioner by placing on record certain documents like character certificate as well as examining witnesses. The externment order does not suffer on any count.

7. The impugned externment order, as modified by the Lower Appellate Authority, does not call for any interference and hence the petition is rejected summarily.

(B.H. Marlapalle,J.)